

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

Energy Resource Management Corp.

Docket Nos. ER96-358-015
EL05-111-002

ORDER DENYING REQUEST FOR REHEARING

(Issued February 28, 2006)

1. In this order, we deny the rehearing request of Energy Resource Management Corp. (ERM) filed in response to the Commission's November 3, 2005 Order revoking ERM's authority to make sales at market-based rates.¹

Background

2. In an order issued on May 31, 2005, the Commission announced its policy with respect to entities that failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated market power analysis.² The Commission directed the captioned market-based rate sellers, including ERM, to file their updated market analyses within 60 days from the date of issuance of that order or provide satisfactory support for why they should not be required to do so. If an entity failed to file an updated market power analysis or provide satisfactory support for why it should not be required to do so within 60 days, its market-based rate authority would be revoked.

3. In the November 3 Order, the Commission revoked the market-based rate authority of the companies that failed to comply with the May 31 Order and terminated their market-based rate tariffs. Because ERM made no filing in response to the May 31 Order, ERM's market-based rate authority was revoked and its market-based rate tariff was terminated effective November 3, 2005.

¹ *3E Technologies, Inc.*, 113 FERC ¶ 61,124 (2005) (November 3 Order).

² *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order). The May 31 Order established a refund effective date of 60 days after publication of notice of the investigation in the *Federal Register*. The notice was published in the *Federal Register* on June 10, 2005, with a refund effective date of August 9, 2005.

4. On December 5, 2005, ERM filed a request for rehearing of the November 3 Order. ERM requests that the Commission reinstate ERM's market-based rate authority. ERM states that it did not become aware of the Commission's May 31 or November 3 Orders until November 18, 2005 and that its failure to file was an oversight. ERM also states it has not made any sales under its market-based rate authority since 2000, as evidenced in its Electric Quarterly Report filing. ERM notes that it is a small company, and that it does not own any transmission, generation, or distribution facilities. Thus, ERM submits that its lack of compliance with the Commission's order poses no potential market risk.

Discussion

5. As the Commission stated in the May 31 Order, in the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price. The Commission directed ERM to submit an updated market power analysis in the May 31 Order in order to execute this statutory duty. In the November 3 Order, we revoked ERM's market-based rate authority in light of ERM's failure to comply with the May 31 Order.

6. The arguments set forth in ERM's request for rehearing of the November 3 Order are not sufficient to justify granting rehearing. The fact that ERM has not made any sales of power under its market-based rate authority, and that it was not aware of the orders at the time of issuance, does not relieve ERM of its responsibility to file an updated market power analysis as directed by the May 31 Order.³ We will therefore deny ERM's request

³ Rule 2010(k) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010(k) (2005), requires that any entity regulated by the Commission provide a person to receive service of documents pertaining to that entity. Rule 2010(k)(2) states that "[e]ach regulated entity has a continuing obligation to file with the Commission updated information concerning the corporate official or person designated to receive service." In addition, the Commission published notice of the May 31 Order in the *Federal Register* on June 10, 2005, 70 Fed. Reg. 33,888-89 (2005). See 18 C.F.R. § 385.2009 (2005). See also 44 U.S.C. § 1507 (2000) (Publication of an order in the *Federal Register* "is sufficient to give notice of the contents of the document to a person subject to or affected by it."); *Yakus v. United States*, 321 U.S. 414, 435 (1944) (citing 44 U.S.C. § 307, now codified as 44 U.S.C. § 1507).

for rehearing. The revocation of ERM's market-based rate authority is without prejudice to ERM making a new filing with the Commission under section 205 of the Federal Power Act to request market-based rate authority.⁴

The Commission orders:

ERM's request for rehearing of the Commission's November 3, 2005 Order revoking ERM's market-based rate authority is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ 16 U.S.C. § 824d (2000).